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# Ernest L. Staley v. W. C. Grant : Brief of Respondent

Utah Supreme Court

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F. Robert Bayle; Attorney for Plaintiff and Respondent;

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# In the Supreme Court of the State of Utah

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ERNEST L. STALEY,

*Plaintiff and Respondent,*

vs.

W. C. GRANT,

*Defendant and Appellant.*

No. 8190

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## RESPONDENT'S BRIEF

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FILED

AUG 20 1954

F. ROBERT BAYLE

*Attorney for Plaintiff and  
Respondent*

Clerk, Supreme Court, Utah

## INDEX

	Page
STATEMENT OF FACTS .....	3
STATEMENT OF POINTS .....	5
ARGUMENT .....	6
Point. I. The decision of the trial court in awarding judgment to the plaintiff was in accordance with the law and evidence.....	6
Point II. The plaintiff was not guilty of contributory negligence as a matter of law.....	6
CONCLUSION .....	10

## CASES CITED

Gibbs vs. Blue Cab (Utah), 249 P. 2d 213, affirmed at 259 P. 2d 294 .....	7
North vs. Cartwright (Utah), 229 P. 2d 871.....	8
Staton vs. Western Macaroni Manufacturing Company, 52 Utah 426, 174 P. 821.....	8
Weenig Brothers, Inc., vs. M. Nephi Manning, Utah 1953, 262 P. 2d 491.....	8

# In the Supreme Court of the State of Utah

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ERNEST L. STALEY,

*Plaintiff and Respondent,*

vs.

No. 8190

W. C. GRANT,

*Defendant and Appellant.*

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## RESPONDENT'S BRIEF

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### STATEMENT OF FACTS

To more accurately state the facts, as recited by the appellant in its brief, and to supplement the same, the respondent is compelled to make some repetition in the following statement.

On the evening of August 22, 1952, the plaintiff and respondent herein, Ernest L. Staley, left his place of employment in Salt Lake City, Utah, intending to proceed to his home in Murray, Utah. Staley was driving his 1949 Chevrolet Sedan and was traveling alone (Tr. 13 and 14). He proceeded south on State Street and stopped his automobile behind another vehicle, a Mercury, which was stopped on the North side of the intersection of 9th South Street and State Street waiting for the semaphore light to change from red to green (Tr. 14, 20, 29, 30, 43 and 44). This Mercury, as well as plaintiff's automobile, was stopped in the left, inside lane, for south-bound traffic. State Street, at this point, was 60 feet in width (Plaintiff's Exhibit 1). Each street was divided by double traffic lines and each had two driving lanes provided for each direction of traffic, as well as a parking lane on each side of the respective streets (Tr. 4 and Plaintiff's Exhibit 1). On this particular evening, the streets were dry, the weather was clear, and visibility was good (Tr. 11). The intersection was well lighted and the semaphore traffic light at the intersection was apparently functioning in a normal manner (Tr. 11 and 12).

When the traffic light changed to green for south-bound traffic, the Mercury ahead of Staley proceeded forward and crossed the intersection, traveling south on State Street (Tr. 15, 37, and 44). Staley also proceeded forward on the green light and had traveled approximately two-thirds of the distance across 9th South Street when his automobile was struck on the left side by a 1951 Hudson Sedan owned and then being driven by W. C. Grant, the defendant and appellant

herein (Tr. 7, 8, 12, 16, 34, and 45). At the time of impact, Staley's vehicle was traveling in low gear and the impact was against the center of the left rear door on his automobile (Tr. 15 and 17). The force of the impact moved the rear of Staley's automobile some 10 feet to the south and west, as evidenced by the skid marks left on the surface of the roadway (Tr. 7, 8, 12, 16, and 25, Plaintiff's Exhibit 1).

There is a sharp conflict in the evidence concerning the manner in which this accident occurred. It is the contention of Staley, the respondent herein, that the intersection was clear of traffic when the light changed to green and he proceeded to follow the Mercury into and across the intersection. His position is supported by the testimony of the independent witnesses, Richard M. Hunsaker and Leon Lowell Davis, as well as by the physical evidence of the skid marks indicating the force with which his vehicle was struck. On the other hand, Grant, the defendant and appellant herein, contends that he was in the intersection and that Staley drove into the right front fender of his automobile (Tr. 50, 51, 53, and 54). The trial court resolved this conflict by adopting Staley's theory of the case and entered Findings of Fact and Judgment in accordance therewith, awarding the plaintiff the sum of \$142.01, and costs.

## STATEMENT OF POINTS

1. THE DECISION OF THE TRIAL COURT IN AWARDING JUDGMENT TO THE PLAINTIFF WAS IN ACCORDANCE WITH THE LAW AND EVIDENCE.

2. THE PLAINTIFF WAS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE AS A MATTER OF LAW.

## ARGUMENT

### POINT I

THE DECISION OF THE TRIAL COURT IN AWARDING JUDGMENT TO THE PLAINTIFF WAS IN ACCORDANCE WITH THE LAW AND EVIDENCE.

### POINT II

THE PLAINTIFF WAS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE AS A MATTER OF LAW.

Inasmuch as the foregoing two points are inter-related, we shall consider them together in the argument hereinafter set forth.

In order for the appellant to overcome the judgment entered herein against him, he must demonstrate to this Court that the evidence shows with such certainty that reasonable minds could not differ thereon that the plaintiff was guilty of negligence which proximately contributed to the collision. It is apparent from the appellant's brief that the only reasonable deduction to be drawn from the evidence is that plaintiff was negligent, as a matter of law, in failing to observe the defendant's automobile until it was 4 or 5 feet away from him. This we cannot agree with. As we previously stated in

our brief, there is a sharp conflict in the evidence between plaintiff and defendant as to how the collision occurred. The plaintiff's version is supported by independent witnesses, as well as by the physical evidence of the force of the impact against the plaintiff's vehicle and the distance it was moved as evidenced by the 10 feet of skid marks made by the rear wheels in the direction it was pushed by defendant's vehicle. The defendant claims he was out in the intersection, stopped, and waiting for east-bound traffic to clear, before he attempted to turn south on State Street. He did not see the plaintiff's vehicle before the collision even though one-half of its length had to have passed in front of him prior to the impact. The defendant claims he was traveling right behind a taxi which had preceded his vehicle into the intersection and turned south on State Street. The plaintiff nor any of the other witnesses recall seeing any such taxi and testified that the intersection was clear except for the Mercury which preceded the plaintiff into the intersection on the green light for south-bound traffic. The truth of the matter is, and the trial court so found, that the defendant apparently become confused at this intersection and drove his vehicle into it when the semaphore light was red for his direction of travel. This was the only reasonable deduction to be made in the light of all the testimony. As the record will show, this case has been tried twice, once in the City Court of Salt Lake City, Utah, and again de novo in the Third Judicial District Court. The plaintiff having both times prevailed, and the trial court below having entered judgment in his favor, on conflicting matters the evidence must now be viewed in the light most favorable to him. *Gibbs vs. Blue Cab (Utah)*, 249 P. 2d 213, affirmed



at 259 P. 2d 294; North vs. Cartwright (Utah), 229 P. 2d 871; Staton vs. Western Macaroni Manufacturing Company, 52 Utah 426, 174 P. 821.

The appellant's brief gives great emphasis to the fact that plaintiff was contributorily negligent as a matter of law in failing to observe defendant's vehicle until just before impact or until it was 4 or 5 feet away. The cases cited by the appellant merely reiterate the well-established rule that a driver of a motor vehicle must at all times keep a reasonable lookout for others using the roadway upon which he is traveling. However, we fail to see wherein these cases are applicable to the facts herein under consideration as they do not involve a collision occurring at an intersection controlled by a semaphore light. It must be remembered that the instant case was not tried before a jury and so the learned trial judge was the trier both of the facts and the law and his judgment upon all questions of fact, if supported by any competent evidence, will not be disturbed upon appeal. Weenig Brothers, Inc., vs. M. Nephi Manning, Utah 1953, 262 P. 2d 491. The physical facts of the skid marks and the point of impact (Plaintiff's Exhibit 1), positively established that plaintiff's automobile was about two-thirds through the intersection when forcefully struck by the front end of defendant's vehicle. The impact on the street was 2 feet south and 1 foot west of the center of the intersection so it is perfectly reasonable for the plaintiff to have followed the Mercury, which was stopped in front of him, into the intersection without seeing the defendant's vehicle until just before impact. The trial court made a finding (R. 79) that the plaintiff pro-

ceeded into the intersection with the green light in his favor and that at that time, the intersection was clear of any other traffic except for the Mercury ahead of him. The court further found that as the front of the plaintiff's automobile reached about the center of 9th South Street, the defendant drove his said vehicle into the intersection from the east and collided with the left side of plaintiff's automobile (R. 79). With these findings supported by material and competent testimony, it can well be assumed that the trial court concluded that the plaintiff found himself in a position of peril by the abrupt actions of the defendant and that he could do nothing to avoid the collision. Under the findings of the trial court, the plaintiff had the right of way and was entitled to rely upon such until he was put on notice by the actions of the disfavored driver (the defendant herein) that the right of way was not to be accorded to him. Under the trial court's interpretation of the evidence, the defendant's version of the accident was not accepted, and rightly so in the light of the plaintiff's testimony and that of the independent witnesses, particularly Richard M. Hunsaker, who was behind the plaintiff and saw the defendant enter the intersection in violation of the traffic light (Tr. 30, 31, 32, 33, 34, 38, 39 and 40). What was the duty of the plaintiff as he prepared to cross the intersection behind the Mercury? It was a duty to use reasonable care under all the circumstances. Plaintiff testified that he looked before starting forward and that the intersection was clear of traffic except for the Mercury ahead of him (Tr. 15, 16, 23, 27 and 28). The plaintiff was traveling slow and in low, or first gear. His duty was to look ahead, in the direction of his travel, and he was not obliged to watch

for traffic approaching from either the east or west until such time as he would have been put on notice as a reasonable, prudent person, that someone would violate the law by traveling through the red semaphore light controlling east-west bound traffic. The learned trial court having made findings, and entered judgment in accordance therewith, thereby adopting plaintiff's theory of the case as supported by the weight of the evidence, we therefore respectfully conclude that the conflicting matters were resolved in favor of the plaintiff and should not be disturbed by this honorable Court on appeal. Such conclusion is supported by ample and substantial evidence in the record and is certainly reasonable in the light of all the testimony.

## CONCLUSION

We respectfully submit that under the law, and the facts in this case, that the findings and judgment of the trial court are amply supported by the evidence and should be affirmed.

Respectfully submitted,

F. ROBERT BAYLE

*Attorney for Plaintiff and  
Respondent*